91-1070

(1)

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

RUSBEIRO MESSA

Petitioner,

v.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE CO.

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

RUSBEIRO MESSA
4161 Salem Street
Philadelphia, Pennsylvania 19124
Telephone: (215) 288-1961

QUESTION FOR REVIEW

When an employee is permanently injured on the job and furtherly injured by his employer's and/or insurance carrier's invocation of state law, and by their conduct, including but not limited to fraud and deceit, abuse and misuse of process, breach of duty or contract, and conspiracy to deprive employee of his compensation rights without due process of law, and those resultant injuries on the job and thereafter, are distinct and separate and not provided or secured under written agreement of compensation, employee has state and federal constitutional rights to claim for personal, mental and economic injuries under his common law rights.

Answered in the negative by the courts below.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

RUSBEIRO MESSA

Petitioner

v.

FRANKFORD QUAKER GROCERY, and NORTHBROOK INSURANCE COMPANY

Respondents [1]

Petitioner, very respectfully, prays that a writ of certiorari issue to review the unpublished Order of the Superior Court of Pennsylvania, consisting in a judgment against petitioner and in favor of petitioner's employer and its insurance carrier.

---

[1] Northbrook's Parent Company is Allstate Insurance Company. Frankford Quaker was purchased in 1988 by Fleming Companies, Incorporated.

OPINIONS BELOW

The Opinion of the trial court is reprinted at Appendix C1. The Judgment and Opinion of the Superior Court is Appendixed A1-A16. The Order of Superior Court denying re-argument is at App. A16. The Orders of the Supreme Court of Pennsylvania denying petition for allowance of appeal and reconsideration is at app. B1. The final official opinion of factual issues from Workmen's' Compensation Referee is at Appendix 5d.

STATEMENT OF JURISDICTION

This is a petition for Writ of Certiorary, respectfully requesting to the Supreme Court of the United States, to review the Order of the Supreme Court of Pennsylvania, M.D., dated June 24, 1991, denying appellant's Petition for Allowance of Appeal.

A petition for reconsideration was denied by Order Sept. 3, 1991.

The Jurisdiction is pursuant to *28 U.S.C. Section 1257 (a)*, where appellant is seeking, inter alia, to redress the deprivation under color of state law of rights secured by the United States Constitution, and also, under statutes of the State of Pennsylvania.

CONSTITUTIONAL PROVISIONS

The Due Process and Equal Protection Clause under the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. Sect. 1983, and under the Fifth Amendment, is on Appendix E1.

Pennsylvania Constitution, Article I, Section 11, and Article III Section 18 are in Appendix E1.

Pennsylvania Rules of Civil Procedures, Rule 1028 (b), requiring preliminary objections at one time, is on Appendix E2.

Pa. R.C.P. Rule 1028 (d) requiring answering complaint within 20 days after order overruling preliminary objections, Appendix E2.

The Consent Decree, declaring Section 413 of the Act unconstitutional is on Appendix E2.

Statutes of the Pennsylvania Workmen's Compensation Act. Appendix E appeal E3-E10.

STATEMENT OF THE CASE

On December 9, 1988, Plaintiff-Appellant Rusbeiro Messa (hereafter Appellant Messa), commenced a civil action in the Common Pleas Court of Philadelphia County, against his employer, appellee Frankford Quaker Grocery (hereafter Frankford), and its workers' compensation carrier, appellee Northbrook Insurance Company (hereafter Northbrook).

In the Complaint, Messa claimed personal, mental and economic injuries as result of appellees' conspiracy to deprive him of his rights for compensation for two distinct and separate injuries sustained on the job, and also, for injuries not covered under the Pennsylvania Workmen's Compensation Act (hereafter the Act). (Complaint #1.)[2]

Messa alleges that on Dec. 27, 1985, he sustained on his heavy lifting job a left inguinal hernia, low back and testicular pain.

---

[2]Due to the unique nature of this case and the issues raised, the statement of facts is lengthier than usual.

That on March 28, 1986, despite more severe pain after hernia surgery,[3] he was denied light duty and exposed to heavy lifting, then sustaining another injury when falling and banging right knee, being permanently disabled after three surgeries. (injury of 1986).

Since then, Messa has not been able to work. Appellees engaged in a conspiracy conduct to cover up injury of 1986, by not reporting it to the Department of Labor, and by filing Petition for Termination invoking Section 413 of the Act, to terminate compensation for injuries of 1985 and 1986. (Appendix D1) Appellant alleged fraud and deceit, breach of duty or contract, abuse and misuse of workers' compensation and civil procedure.

Preliminary Objections were filed by counsel on behalf of both Frankford and Northbrook, pleading inter alia, employer's immunity under Section 481 of the Act as in *Rossipal v. Montgomery Ward,* 521 A. 2d. 49 (1987), alloc. granted, 533 A.2d. 93 (1987), appeal dismissed, 538 A 2d.. 495 (1988), and also pleading that , employee has an independent cause of action against insurance carrier, as recently ruled in *Kuney v. PMA*

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[3]During exploratory surgery on 7-10-87, it was discovered that pain was due to nerve entrapment and damaged during hernia surgery 1-20-86, epididymitis and right inguinal hernia.

Insurance Company, 550 A.2d. 1009 (Pa. Super. 1988) (R. 13a., 12a.)

Messa responded pleading Article III, Sections 301, 306 and 315 of the Act. (R. 14a.), duty to accept liability provisions.

Hereafter, Northbrook independently filed appearance of counsel (no withdrawal of former counsel or leave of court), and filed again Preliminary Objections to strike Complaint. (R. 16a.)

By Order of April 12, 1989, (docketed 5-2-89), Common Pleas Court Judge, denied appellees' preliminary objections, and also a reconsideration. (R. 32a., 37a.). (Appendix. C3)

Frankford and Northbrook filed answer to complaint, Northbrook crossclaimed against Frankford for contribution or indemnity; no answer to crossclaim was filed. (R. 45a.)

On June 8, 1989, after all pleadings had been filed and ruled by the court, Messa filed a Motion for Summary Judgment, based on the admissions on appellees' pleadings, and untimely answer to complaint with general denials. A list of Exhibits and affidavit.[4]

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[4]Answer was not filed in accordance to Pa. R.C.P. 1028 (d) requiring to file answer to complaint within twenty days after overruling Order, and Rule 1029, failure to deny is admission. As exhibits, two transcripts of Messa's testimony and his attorney before Referee, about no supersedeas hearing before suspension of benefits, also indicating distinct unreported-uninsured under

Frankford again mailed untimely the response to plaintiff's motion for summary judgment on July 12, 1989, without certification of service, but an affidavit: "Frankford Quaker has a contract with Northbrook Insurance Company whereby Frankford Quaker would take an initial report of injury from the employee and send it to Northbrook. Northbrook then processed the claim from that point forward . . . ." (R.86a) (77 P.S. Sect. 994) The docket of the court did not show if or when response was filed.

On August 2, 1989, the court entered two Orders not ruling on motion of plaintiff for summary judgment, but sustaining appellees' preliminary objections, dismissing plaintiff's complaint against both defendants and second Order allowing plaintiff to amend the complaint against Northbrook only. (R.92a, 93a). (App. C4.)

Messa timely appealed to the Commonwealth Court of Pennsylvania on August 31, 1989, where it was transferred to the Superior Court.

Messa also amended complaint against Northbrook with exhibits the certification from Department of Labor that injury of

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agreement injuries of March 1986, and fraud on Notices of compensation and Final Receipt.

1986 not on records, and also, injury removed from industrial clinic records. (R.127a). Northbrook filed preliminary objections, Messa amended as of course; then Northbrook withdrew objections, frustrating amendment of complaint; plaintiff served a notice of default, and the court denied amendment because matter on appeal. (96a).

On October 13, 1989, Judge from Common Pleas Court, Honorable Samuel Lehrer, filed Opinion on Superior Court, that Orders on appeal were error of the court and that Order of 4-12-89, denying preliminary objections should be controlling (Appendix C1)

Plaintiff filed Record and Briefs on Superior Court, and later, counsel for appellees, Michael Schaff, Esquire, filed withdrawal of appearance, and two more counsels from different law firms entered appearance for each defendant. Messa filed a motion to strike withdrawal of appearance without leave of court, pursuant to Pa. R.A.P. Rule 907. (Appendix E2) Motion was denied.

During the Oral Argument and on the Brief, appellant Messa argued that appellee Northbrook pled for the first time the specific immunity provision for insurance carrier under the Act, 77 P.S. section 501; Frankford pled Sect. 481. In the Trial Court's

pleadings defendants were adverse parties. That appellees intentionally, knowingly, and maliciously violated and rejected liability provisions of the Act, then rejecting the immunity provisions, opting to attend injury of 1986 out of the Act, or unlawfully using notice of compensation payable of 1985 suspended without hearing, in order to have a reason for not paying benefits for injury 1986. 77 P.S. Sections 731, 531, 717.1, 994. Messa also alleged damages for abuse and misuse of process under *42 Pa. C.S. Section 8351*, and *Pennsylvania Constitution Article III, Section 18*, (Brief pg. 9). Finally, that granting Northbrook's second preliminary objections prejudiced Messa, contrary to *Pa. R.C.P.1028 (b)*, providing objections one time.

In *Rosipal* this Superior Court established that action against employer is barred by the Act, "where employee did not allege that the employer failed to comply with provisions of the Act in terminating benefits' (Reply Brief pg. 9). Johnson, J., dissented.

By those days after the argument, counsel for Northbrook rushed the ruling of the Supreme Court of Pennsylvania in *Kuney*, to the Prothonotary of the Superior Court, reversing the previous decision of this court, the Supreme Court ordered:

> "Employer's liability for aggravated injuries is governed solely by Workmen's Compensation Act, and the same is true of compensation insurance carrier; injuries not covered by Act, of course are not subject to tort immunity. 77 P.S. Sect 481 (a), 501." Justice Larsen and Pakadakos dissented. Kuney v PMA Insurance Company, 578 A 2d. 1285 (Pa. 1990)

Based on the decisions on *Rosipal* and *Kuney*, the Superior Court entered a judgment on Sept. 28, 1990, affirming the judgment of the trial court, dismissing plaintiff's complaint. Petition for re-argument was denied on Oct. 30, 1990 (Appendix A14).

On Nov. 29, 1990, Messa filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania where he alleged that appellees did not comply with provisions of the Act in terminating benefits under Section 413, where this section terminates or suspends a Notice or agreement of compensation; there is no agreement for knee injuries, and no record of this injury on workers' compensation files as certified by Department of Labor. (R 127a. Appendix D8); it was alleged that filing that petition for termination in absence of a Notice of Compensation Payable,

constitutes an abused and misuse of process in a fraudulent and conspiracy form to deprive Messa of his compensation benefits without the due process of law, and in violation of the Fourteenth and Fifth Amendment of the Constitution, the access to court to remedy wrong, Article III, Section 18, and Article 1 Section 11. Also, that Section 413 of the Act had been founded as unconstitutional by a Federal Court in *Baksalary v. Smith,* 579, F. Supp. 218 (1984). (Pet. Allowance of Appeal pg. 9)

That in *Kuney v. PMA Insurance Company,* 578 A 2d.. 1285 (Pa. 1990) at 1286, the Court stated:

> " . . . while the employer assumes liability without fault for a work related injury, he is relieved of the possibility of a larger damage verdict in a common law action."
>
> Also: "The statute therefore deprive workers of some rights in exchange for sure benefits, and immunized employers from common law actions in order to make benefits available to workers who were therefore without practical remedies."
>
> (petition for alloc. pg. 10)

Messa has persistently alleged that since 1986, employer and insurance carrier have not assumed liabilities for permanent knee injuries of 1986, as provided by the Act, 77 P.S. Sect. 994, 717.1

Messa also alleged injuries not covered by provisions of the Act under section 306, as epididymitis (testicular injury) by exposure to heavy lifting or traumatic as consequence of injuries of 1985, citing *Koslop v. Cabot, 631, F. Supp. 1494 (M.D. Pa. 1986):*

> "In order to state cause of action under intentional tort exception to Pennsylvania Workmen's Compensation Act, worker must assert more than employer's awareness of dangerous conditions at work site." (Pet. alloc, appeal, pg. 10)

Messa alleged also addiction to narcotics and antidepressants sustained since 1987 while medical benefits have been denied. (R. 4a)

Appellant Messa requested the Court for prompt remedy: "A judgment against appellant will leave him still on pain and with burden of a work related injury with a diagnosis of permanent disability and a prognosis of a painful and expensive medical treatment."

On June 24, 1991, the Supreme Court of Pennsylvania, Middle District, denied the petition for allowance of appeal.

Messa filed timely a petition for reconsideration pursuant to *Pa. R.A.P. Rule 1123(b)*, explaining violation of the Consent Decree of the federal district court in *Baksalary v. Smith, 591 F. Supp. 1292*,where Allstate Insurance Company was a direct member of the defendant class, Messa a member of the plaintiff class, and where the district court declared Section 413 unconstitutional.

Messa explained that Orders of Referee granting supersedeas were incorrect, since Messa did not have a hearing before the termination, to argue that physicians' letters were not affidavits (R. 68a) and petition for termination did not comply with Sect. 413.

Reconsideration petition was denied on Sept. 3, 1991. (Appendix B2).

ARGUMENT

Under 28 U.S. C. Section 1257, the Supreme Court of the United States, have jurisdiction to review final judgments or decrees' rendered by the highest court of a State in which a decision, favored to Appellant Messa, could be had, and where the validity of a treaty or statute (or Decree) of the United States is drawned in question, or where the validity of a statute of any State is drawned in question on the ground of its being repugnant to the Constitution. Also under Supreme Court Rule 10 (c).

Messa has alleged that he was deprived of his workmen's compensation benefits, not in compliance with the Act, under fraud and deceit, and in contempt to court, and in violation of his constitutional rights to redress, due process and equal protection.

When an employee is injured on the job, the employee and the employer have obligations in procedure: the employee to report injuries within statutes of limitations or have the risk of not been compensated *Bolitch v. W.C.A.B.* 572 A 2d.. 39 (Pa. Cmwlth, 1990).

The employer investigates injuries and proceeds promptly to report directly to Department of Labor and Industry, and to assume

liabilities under an agreement or Notice Payable within some statutes of limitations. *(77 P.S. Sections 994, 717.1, 731)* Appendix 3e, 4e. The Department of Labor certified that knee injury on March 28, 1986 was not reported; (Appendix 8d), defendants do not deny it, do not agreed on compensation Payable, and filed petition for termination for legitimate previous injuries of 12-27-85, in order to include knee injury. No pre-termination hearing was provided to rebut termination.

These allegations make proper the following citations to contradict the ruling in *Kuney* that despite fraud and deceit Messa is barred to claim personal, mental, and economic and constitutional injuries on a court of law. Also in *Pekular v. Eich,* 513 A 2d.. 427 (Pa. Super. 1986) *Schultz v. Allstate Ins. Co.,* 764 F. Supp 1404 (D. Colo. 1991).

. . . *Any* invocation by any defendant of the automatic supersedeas provision after this date in order to terminate an individual's workmen's compensation benefits without prior notice or a predetermined opportunity to be heard is hereby DECLARED to be a deprivation of that individual's property without due process of law. March 15, 1984 Order at pgh. 1(b).

Baksalary v. Smith, 591 1279 (1984) at 1294

The Supreme Court has "consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterized that party as a 'state actor' for purposes of the Fourteenth Amendment" Lugar, at 457 U.S. at 941, 102 S. Ct. at 2756"

Baksalary v. Smith, 579 F. Supp. 218 (1984) at 231.

Employee's action against employer, for allegedly terminating her workmen's compensation benefits, in order to cause her severe emotional distress . . . was barred by exclusivity provision of Workmen's Compensation Act, where *employee did not alleged* that the employer failed to comply with provisions of Act in terminating benefits. 77 P.S. Section 481. Johnson, J., dissenting.

Rossipal v. Montgomery Ward, 521 A 2d.. 49 (1987), alloc. granted 533 A 2d 93 (1987) Appeal dismissed, 538 A 2d. 495 (1988) (emphasis added)

Employer's liability for aggravated injuries is governed solely by Workmen's Compensation Act, and the same is true of compensation carrier, *injuries not covered by the Act, of course, are not subject to tort immunity.*

(emphasis added)

Kuney V. PMA Insurance Co. 578 A 2d.. 1285 (Pa. 1990)

Breach of insurer's duty to deal with the insured fairly and in good faith renders the insurer liable for damages naturally flowing from the breach.

Schultz v. Allstate Insurance Company, 764 F. Supp. 1404 (D. Colo. 1991)

The final decision of Referee Stevenson the defendants were found in violation of the Act for not accepting liabilities for injury of 1986 under Notice Payable. Messa's counsel presented the proposed Order, without the consent of Messa, suspending compensation for injury of 1986 while paying the 1985. Case is on appeal. (Appendix 5d).

Since Messa is also alleging injuries not covered under the Act, as epididymitis for exposure to heavy lifting, and addiction to

narcotics and antidepressants while medical benefits is being denied, the tort immunity should not be appropriate in this case.

Since the supersedeas was granted, Messa has discontinued medical treatment for lack of payment, has sold his house to pay bills himself, has not been reimbursed for disability benefits from May 1987 to January. 1988, and medical bills over $11, 000, despite being represented by an attorney.

Messa respectfully requests to the Supreme Court of the United States, a relief judgment declaring defendants in contempt to court for invocation of a prohibited statute, immediate reimbursement of money owed to him, and the right to claim for damage under common law action.

Very Respectfully submitted,

RUSBEIRO MESSA

4161 Salem St.

Philadelphia, Pennsylvania 19124

APPENDIX A - 1

RUSBEIRO MESSA
APPELLANT

v.

FRANKFORD QUAKER
GROCERY and
NORTHBROOK INSURANCE
COMPANY

IN THE SUPERIOR COURT OF
PENNSYLVANIA

NO. 03068 PHILADELPHIA 1989

OPINION

Appeal from the Order Entered August 2, 1989 in the Court of Common Pleas of Philadelphia County, Civil No. 1408 Dec. 1988.

BEFORE: WIEAND, BECK, POPOVICH, JJ

MEMORANDUM:

This case present two questions: (1) whether the trial judge erred when he sua sponte issued order sustaining appellees' preliminary objections after already having denied them; and (2) whether an employee may maintain an action in tort against an

employer and its insurance carrier for interference with his right to receive worker's compensation benefits and intentional infliction of emotional distress, or whether such an action is barred by the Workmen's Compensation Act, Pa. Stat. Ann. tit. 77, §§ 1-676 (Purdon Supp. 1990).

Appellant, Rusbeiro Messa ("Messa"), sued appellees Frankford Quaker Grocery ("Frankford"), his employer, and Frankford's insurance carrier, Northbrook Insurance Company ("Northbrook") (collectively "appellees") for deliberately interfering with his right to receive worker's compensation benefits and for intentional infliction of emotional distress. The trail court sustained appellees' preliminary objections in the nature of a demurrer and dismissed the complaint. We affirm.

Messa worked as a warehouseman for Frankford from 1977-1986, where he was responsible for lifting and storing boxes and operating a forklift. He first injured his groin in 1982. The injury was aggravated by continued heavy work, until Messa required hernia surgery in 1985. In 1986, Messa injured his knee on the hob, and hasn't worked since. He was initially denied worker's compensation benefits for both of these injuries, but was eventually awarded benefits by a referee. He contends in this case

that appellees cut off his benefits prematurely, and deliberately hindered Messa's case before the Workmen's Compensation Board by failing to report the knee injury to the proper authorities and by witholding evidence.

Frankford and Northbrook were initially represented by the same counsel. On January 19, 1989, they filed joint preliminary objections in the nature of a demurrer. Northbrook subsequently obtained its own counsel, who filed a preliminary objection in the nature of a motion to strike the complaint of February 16, 1989. On April 12, 1989, Judge Lehrer of the Philadelphia Court of Common Pleas issued an order deny the joint preliminary objections on the ground that Messa's complaint states a cause of action under *Kuney v. PMA Insurance Co.*379 Pa. Super. 598, 550 A. 2d 1009 (1988), **reversed**, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990). Northbrook's supplemental preliminary objection was also denied. Frankford filed a motion for reconsideration, which was denied by Judge Lehrer on May 8, 1989. Northbrook and Frankford each filed an Answer and New Matter to Messa's complaint. On June 8, 1989, Messa filed a Motion for Summary Judgement.

The judge then, sua sponte, issued two inconsistent orders in response to the preliminary objections, both dated July 26, 1989 and both docketed on August 2, 1989. One order, applicable to both appellees, sustains the first set of preliminary objections, and dismisses Messa's complaint for failure to state a cause of action. The other, applicable only to Northbrook, strikes the complaint but grants Messa leave to amend. On August 14, 1989, Judge Lehrer denied Messa's motion for summary judgement. Appellant appeals only from the order of July 26, 1989 dismissing the complaint.[1]

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[1]We emphasize that Messa appeals only from the order that dismisses the complaint. That order, issued in response to preliminary objections filed jointly by Frankford and Northbrook, is final and appealable, as it effectively put Messa "out of court." *Cunningham v. Prudential Property and Casualty Insurance Co.*, 340 Pa. Super 130, __, 489 A. 2d 875, 877, (1985). The second order, issued in response to Northbrook's preliminary objections, which struck the complaint but granted Messa leave to amend, is not a final order and is ordinarily not appealable. *Freeze v. Donegal Mutual Insurance Co.*, 504 Pa. 218, __, n. 5, 470 A.2d 958, 960, n.5 (1983). We nevertheless treat the order appealed from as final as to both Frankford and Northbrook. The first order applies to both appellees. Messa, who is proceeding in this matter pro se, did not unreasonably conclude that the order dismissing the complaint put him out of court. Due to the confusion resulting from judicial error in this case, it is our view that Messa should not be penalized for appealing rather than amending the complaint and proceeding against Northbrook below. Even if appellant had taken the course of amending the complaint, he would be out of court as to Frankford. Therefore, the appeal is proper.

Judge Lehrer issued an opinion in response to Messa's notice of appeal, in which he attempted to explain his actions in this case. The opinion states:

> When this Court entered the Orders signed on [July 26] 1989, it was under the misapprehension that Defendants' corresponding preliminary objections had not yet been disposed of. On April 12, 1989, this Court had, however, already signed an Order which decided those same objections. The subsequent Orders which are on appeal now may be viewed as reconsideration due to the expiration of the 30 day period. See Rules of Appellate Procedure §§ 1701 (b) (3); 903 (a). Therefore, the Order signed on April 12, 1989 should be controlling.

Trial Court Op. at 1-2. We consider first whether the judge had jurisdiction to issue the order of July 26 dismissing the complaint.

The April 12 order denied both the joint preliminary objections and Northbrook's supplemental preliminary objection. Judge Lehrer concluded that he did not have

jurisdiction to reconsider this order on July 26 because more than thirty days elapsed since he issued the April 12 Order.[2] 42 Pa. Cons. Stat. Ann. § 5505 (Purdon 1981) governs the modification of court orders and provides:

> Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind an order within thirty days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.

It has been consistently held that the thirty day limitation in section 5505 applies only to final orders. *Commonwealth v. McMillan* 376 Pa. Super. 25, __, 545 A.2d 301, 305 (1988), *aff'd*, 523 Pa. 426, 567 A.2d 1043 (1990); *Atlantic Richfield Co. v. J.J. White, Inc.*, 302 Pa. Super. 276, __, 448 A.2d 634, 636 (1982). The April 12

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[2]We note preliminarily that the two rules cited by the trial judge, Pa. R. App. P. 1701 (b) (3) and 903 (a), involve the power of the trial court to modify its orders after an appeal has been taken. The action of the trial judge in the instant case occurred prior to the filing of a notice of appeal. Thus, the cited rules are inapplicable.

order in the instant case, denying preliminary objections, in an interlocutory order. *MacNeal v. I.C.O.A., Inc.*, 382 Pa. Super 430, __, 555 A.2d 916, 918 (1989); *Foulke v. Lavelle*, 308 Pa. Super 131, __, 454 A. 2d 56, 58 (1982). The passing of thirty days, therefore, did not divest the court below of its jurisdiction to modify the Order of April 12. In fact, the trial court has inherent power to correct its interlocutory orders. *Commonwealth v. Cole*, 437 Pa. 288, 292-93, 263 A. 2d 339, __ (1970) (trial court possesses inherent power to correct patent mistakes in its orders); *Atlantic Richfield Co.*, 302 Pa. Super. at __, 448 A. 2d at 636. Judge Lehrer was therefore free to reconsider the April 12 order.

Having concluded that the judge had jurisdiction to reconsider the April 12 Order, we proceed to consider whether he erred in doing so sua sponte. For the reasons that follow, we find no error.

A trial court may reconsider final orders under Section 5505 sua sponte. *Anderson v. Anderson*, 375 Pa. Super 341, __, 544 A. 2d 501, 504 (1988). The *Anderson* panel described the court's power under section 5505 as "almost completely discretionary; this power may be exercised *sua sponte*, or may be invoked by a request for reconsideration filed by the parties, and the court's decision to

decline to exercise such power will not be reviewed on appeal." 375 Pa. Super. at __, 544 A. 2d at 504. We find it prudent that the trial judge be given similar discretion when reconsidering interlocutory orders, and hold that the trial judge may reconsider interlocutory orders sua sponte.

Since the order appealed from was properly issued; we may address the substantive question raised in this appeal. The issue is whether the Workmen's Compensation Act (hereafter, "the Act") permits a cause of action against an employer and its insurance carrier for interference with a worker's compensation claim, and emotional distress arising therefrom, or whether such an action is barred by the Act's exclusive remedy provisions.

The standard of review when considering an order granting preliminary objections in the nature of a demurrer was stated by the Pennsylvania Supreme Court in *County of Allegheny v. Commonwealth*, 507 Pa. 360, __, 490 A. 2d 402, 408 (1985) as follows:

> A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. For the purpose of testing

the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well pleaded, material relevant facts, and every inference fairly deducible from those facts. The pleader's conclusions of law are not considered to be admitted as try by demurrer.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of the demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief can be granted. If the facts as pleaded state a claim for which relief may be granted under any theory of law, then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

(Citations omitted)

Under this standard, Messa's complaint establishes the following. Messa worked for Frankford from 1977 to March 28, 1986 as a warehouseman. His duties included pulling and pushing

six foot high loaded carts, lifting boxes weighing up to seventy-two pounds, and operating a fork-lift and tractor. Messa first injured his groin in 1982 while lifting a seventy pound box. Despite doctors' recommendation that he be given light work to do, Frankford ordered Messa to continue with heavy work. His injury was aggravated by continued heavy lifting. In 1984, Messa was denied Worker's compensation for this injury. In December of 1985, Messa further injured his groin, requiring a hernia operation. Messa did receive worker's compensation benefits for this injury, but Northbrook sent Messa a notice of final compensation only three days after the surgery. In March of 1986, Messa injured his right knee on the job. This injury required surgery, and Messa has not worked since.

Messa received compensation for the knee injury, but it was terminated upon petition of Frankford in May 1987, despite the fact that Messa required further surgery on his knee. In January of 1988, Messa filed a claim petition directly to the Department of Labor. His investigation disclosed that Frankford never reported the knee injury to the proper authorities. Frankford also failed to present factory records under subpoena. After a hearing, Messa's benefits were reinstated. Despite the referee's order, appellees have

refused to pay for continued medical treatment. As a result of the aggravation caused by appellees' refusal to pay for medical treatment, Messa suffers from depression in addition to continued pain from the work-related injuries. Appellees refuse to pay for treatment for the depression and continued pain.

Messa contends that Frankford and Northbrook intentionally hindered his worker's compensation claim, and in so doing, caused him emotional distress. As such, he argues, they are not protected by exclusive remedy provisions in the Act. Judge Lehrer found in his order of April 12 that the allegations in Messa's complaint state a cause of action under *Kuney v. PMA Insurance Co.*, 379 Pa. Super. 598, 550 A. 2d 1009 (1988) *reversed*, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990). The order of July 26, however, which reconsidered the April 12 order, ruled that the complaint failed to state a cause of action. That order does not indicate the legal basis on which this determination was made.

Appellees contend in their briefs that sections 481 (a) and 501 of the Act preclude Messa from bringing a cause of action against them for interference with Messa's right to collect benefits and for intentional infliction of emotional distress. Section 481 relates to the liability of an employer and provides:

> (a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death [.]

Section 501 provides that insurance carriers "assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder [.]"

We consider first whether these provisions preclude Messa from maintaining a cause of action against Frankford, the employer, for intentionally hindering his worker's compensation claim and for emotional distress. We find that under our current precedents, there is no action against an employer for claims arising from the employer's intentional mishandling of a worker's compensation claim.

In *Rosipal v. Montgomery Ward*, 360 Pa. Super. 570, 521 A. 2d 49 (1987), *appeal granted*, 516 Pa. 635, 533 A. 2d 93 (1987), *appeal dismissed*, 517 Pa. 460, 538 A. 2d 495 (1988), Joann Rosipal commenced a civil action against her employer,

Montgomery Ward.for claims arising from the faulty administration of her worker's compensation claim. Her complaint alleged causes of action for economic duress, intentional infliction of emotion distress, procurring a "false and fraudulent affidavit of [recovery]," and breach of the compensation agreement. 360 Pa. Super. at __, 521 A. 2d at 50. Montgomery Ward filed a preliminary objection in the nature of a demurrer, averring that Rosipal's claims were barred by the exclusive remedy provisions of the Act. The trial judge overruled Montgomery Ward's preliminary objections, finding that Rosipal's claim "did not arise from an employment related accident such as would be covered by the Workmen's Compensation Act." *Id.* The Superior Court granted Montgomery Ward's petition for review, and rejected the lower court's analysis, reasoning:

> . . . the underlying factor in the present action is the alleged injury suffered by the employee while she was acting as a security guard. In the absence of the injury, there would have been no workmen's compensation proceedings out of which the instant civil action arose.

Id. The *Rosipal* panel held that the exclusivity provisions of the act preclude a cause of action against an employer for claims related to the mishandling of a worker's compensation claim. The trial judge in the instant case was therefore correct in concluding that Messa's complaint stated no cause of action against Frankford.

Rosipal involved claims only against an employer. We now proceed to determine whether Messa's claim against the insurance carrier is also barred by the exclusive remedy provisions of the Act.

Based on the recently decided Pennsylvania Supreme Court case of *Kuney v. PMA Insurance Company*, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990), we conclude that Messa can not maintain an independent action against appellee Northbrook.

Order affirmed.

APPENDIX A - 15

RUSBEIRO MESSA
APPELLANT

IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

FRANKFORD QUAKER
GROCERY and
NORTHBROOK INSURANCE
COMPANY

NO. 03068 PHILADELPHIA 1989

JUDGEMENT

ON THE CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby affirmed

BY THE COURT

PROTHONOTARY

Dated: September 28, 1990

JA14011/90

RUSBEIRO MESSA
APPELLANT

IN THE SUPERIOR COURT
OF PENNSYLVANIA

v

APPENDIX A - 16

FRANKFORD QUAKER GROCERY and

NORTHBROOK INSURANCE COMPANY

NO. 03068 PHILADELPHIA 1989

ORDER

The court hereby denies the application filed October 12, 1990, requesting reargument or reconsideration of the decision dated September 28, 1990.

Date: October 30, 1990 PERCURIAM

APPENDIX B - 1

Supreme Court of Pennsylvania

Middle District

June 28, 1991

Re: Rusbeiro Messa, Petitioner

v.

Frankford Quaker Grocery and

Northbrook Ins. Co.

No. 1043 E.D. Allocatur Docket 1990

Dear Mr. Messa:

This is to advise that the following Order has been entered for the Petition for Allowance of Appeal filed in the abovecaptioned matter:

"June 24, 1991, Petition denied

Per Curiam"

Sincerely, yours

Shirley Bailey, Chief Clerk

APPENDIX B - 2

Supreme Court of Pennsylvania

Eastern District

September 10, 1991

Re: Rusbeiro Messa, Petitioner

v.

Frankford Quaker Grocery and

Northbrook Ins. Co.

No. 1043 E.D. Allocatur Docket 1990

Dear Mr. Messa:

This is to advise you that the following Order has been endorsed on your Application for Reconsideration filed, in the above captioned matter.

"September 3, 1991

Petitioned Denied.

Per Curiam.

Very truly yours,

Patricia Johnson, Assistant Chief Clerk

APPENDIX C - 1

RUSBEIRO MESSA

vs

FRANKFORD QUAKER GROCERY
and NORTHBROOK INSURANCE CO.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
DECEMBER TERM, 1988

NO. 1408

OPINION

Plaintiff Rusbeiro Messa filed a notice of appeal to the Commonwealth Court from an Order of this Court signed on July 7, 1989 and docketed on August 18, 1989. This Court issued two Orders with these dates. The first Order granted both Defendants' Preliminary Objections and dismissed Plaintiff's Complaint for failure to state a cause of action and for improper service. The second Order granted Defendant Northbrook Insurance Company's ("Northbrook") Preliminary Objections and ordered that the Complaint be stricken with leave for Plaintiff to file a more specific pleading. Plaintiff does not indicate which of these Orders he is appealing.

Plaintiff brought this action on the basis of work-related injuries which he suffered while being employed by Defendant Frankford Quaker Grocery ("Grocery"). At the time of the injuries,

Defendant Grocery had a policy of worker's compensation insurance policy with Defendant Northbrook. Plaintiff received workmen's compensation benefits. On February 2, 1987, the Defendants filed a Petition to Terminate, Modify or Suspend Compensation with the Workmen's Compensation Bureau.

When this Court entered the Orders signed on July 7, 1989, it was under the misapprehension that Defendants' corresponding Preliminary Objections had not yet been disposed of. On April 12, 1989, this Court had, however, already signed an Order which decided those same objections. The subsequent Orders which are on appeal now may be viewed as a reconsideration. On July 7, 1989, this Court had, however, lost its jurisdiction for such a reconsideration due to the expiration of the 30 day period. See Rules of Appellate Procedure §§1701(b)(3); 903(a). Therefore, we find that the Order signed on April 12, 1989 should be controlling.

We note that appeal has been taken to the Commonwealth Court. The Commonwealth Court only has appellate jurisdiction in matters listed in 42 Pa. C.S.A. §762. The instant matter is not covered by this provision. The appeal may, however, be transferred to the proper court according to Rules of Appellate Procedure §751.

BY THE COURT SAMUEL M. LEHRER, J.

APPENDIX C - 3

RUSBEIRO MESSA

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

VS

DECEMBER TERM, 1988

FRANKFORD QUAKER GROCERY
and NORTHBROOK INSURANCE
COMPANY

NO. 148

ORDER

AND NOW, this 12th day of April, 1989 upon consideration of the preliminary objections of defendants, Northbrook Insurance Company, and Frankford Quaker Grocery, and plaintiff's response thereto, it is hereby ORDERED and DECREED:

1. Defendant's preliminary objection based on service upon defendant, Northbrook Insurance Company is denied, since no service is recorded upon the docket entries to strike.

2. Defendants' preliminary objection in the nature of a demurrer is denied. Plaintiff's complaint alleges a cause of action. Compare *Kuney v. PMA*, 550 A.2d 1009 (Pa. Super. 1988).

3. Defendant Northbrook Insurance Company's Supplemental preliminary objections are dismissed. Pa. R.C.P. 1028(b) requires that all preliminary objections be raised at one time.

BY THE COURT

SAMUAL M. LEHRER, J.

RUSBEIRO MESSA	COURT OF COMMON PLEAS
VS.	PHILADELPHIA COUNTY
FRANKFORD QUAKER GROCERY AND NORTHBROOK INSURANCE COMPANY	DECEMBER TERM 1986 NO. 1408

ORDER

AND NOW , to wit, this 26 day of July 1989, upon consideration of the Preliminary Objections of the defendants, to Plaintiff's Complaint, and any Answers thereto, it is hereby ORDERED and DECREED as follows:

Plaintiff's Complaint is dismissed for failure to state a viable cause of action and for improper service.

ORDER

AND NOW, this 26th day of July, 1989, upon consideration of the preliminary objections of defendant, Northbrook Insurance Company, and plaintiff's response thereto, it is hereby ORDERED and DECREED that plaintiff's complaint is stricken with leave to plaintiff to file a more specific pleading pursuant to Pennsylvania Rule of Civil Procedure 1017(b)(3).

APPENDIX D-1

LIBC-40 (2-78)

Commonwealth of Pennsylvania	Petition for
Department of Labor and Industry	Termination, Suspension, or
Bureau of Worker's Compensation	Modification of Compensation
	section 413

Rusbeiro Messa 172-48-1387

vs.

Frankford Quaker Grocery Co. Northbrook Insurance Company

TO YOUR HONORABLE REFEREE

Frankford Quaker Grocery Co., employer in the above case hereby petitions that compensation payable thereunder be terminated, suspended, or modified as of November 11, 1986 on the grounds that the (disability) of Rusbeiro Messa entitled to compensation under Notice of Compensation Payable,

APPENDIX D-2

All disability referable to the aforementioned injury has ceased and terminated. In the alternative, the Claimant's disability has subsided to a point whereby he is capable of gainful employment within his restrictions and within the appropriate geographical area. Accordingly, the Claimant is entitled to a termination, suspension or modification depending on the evidence.

A supersedeas is (requested) for the following reasons: See the foregoing allegations.

Frankford Quaker Grocery Co.

APPENDIX D-3

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF LABOR AND INDUSTRY

BUREAU OF WORKER'S COMPENSATION

INTERLOCUTORY

REFEREE'S DECISION

RUSBEIRO MESSA

S.S No. 172048-1387

Request for Supersedeas as of November 11, 1986 in connection with Defendant's Petition for Termination

VS

Frankford Quaker Grocery Co.

DEFENDANT'S INSURANCE CARRIER

Northbrook Ins. Co,

BEFORE IRVIN STANDER REFEREE,

PHILADELPHIA DISTRICT

APPENDIX D-4

HEARINGS: March 13, 1987 at the State Office Bldg., Phila. PA 19130

APPEARANCES: COUNSEL FOR CLAIMANT

Louis Kattleman, Esquire

J. Davy Yockey, Esquire COUNSEL FOR DEFENDANT

REFEREE'S INTERLOCUTORY ORDER

SUPERSEDEAS IS GRANTED as of May 5, 1987.

IMPORTANT NOTICE: This order does not constitute a Final Deposition of the Defendant's Petition for Termination; but is only a determination of the request for Supersedeas. The parties will be notified of a further hearing to be held before the Referee on the merits of Defendant's Petition for Termination. THIS INTERLOCUTORY ORDER IS NOT SUBJECT TO APPEAL.

DATE: 5-7-87 IRVING STANDER, REFEREE

PHILADELPHIA DISTRICT DATE: 5-7-87

APPENDIX D-5

RUSBEIRO MESSA SSN 172-48-1387

v.

FRANKFORD QUAKER GROCERY

CONCLUSIONS OF LAW

1. Both the Claimant and Defendant are bound by the provisions of the Pennsylvania Workers Compensation Act as amended.

2. The Defendant has failed to show that the Claimant's disability, due to the work injury, terminated.

3. The Defendant has failed to show work available to the Claimant

4. Claimant has shown that he suffered a work injury on March 28, 1986, to his right knee.

5. Claimant has shown the Defendant failed to issue either an Notice of Compensation Payable or Notice of Compensation Denial for the March 28, 1986 injury.

6. Pursuant to Section 306(f) of the Act, Defendant shall pay Claimant's outstanding medical expenses totalling $6,660.88.

7. Pursuant to Section 440 of the Act, Defendant shall pay Claimant's costs totalling $2,447.34.

8. Pursuant to Section 442 of the Act, the Claimant's 20% fee agreement is hereby approved as reasonable.

9. Defendant has presented an unreasonable contest of this Petition.

10. Claimant has shown that Defendant is in violation of Section 306 (f) of the Act in not paying medical expenses.

PROPOSED ORDER

APPENDIX D-7

AND NOW, on this 29th day of November, 1990, the instant Termination/Modification Petition is DENIED and DISMISSED. Claimant's Review Petition and SAFR Petitions are denied and dismissed as moot. Claimant's Claim Petition, July 12, 1989 Penalty Petition and December 18, 1989 Penalty Petition are granted. Therefore, Defendant is ORDERED and DIRECTED to pay total disability benefits to Claimant as of March 28, 1986, for the injury; however, those benefits are suspended while Defendant pays on the December 27, 1985 injury.

Further, the Defendant is Ordered and Directed to pay Claimant's medical expenses of $6,660.88, coupled with a 20% penalty.

Further, the Defendant is Ordered and Directed to pay Claimant's litigation costs of $2,447.34.

Further, the Defendant is Ordered and Directed to pay a 20% penalty for failure to issue a Notice of Compensation payable, or a Notice of Compensation Denial on the March 27, 1986 work injury.

Further, the Defendant is Ordered and Directed to pay James J. Muller, Esquire 20% of the Award as a counsel fee, said fee chargeable solely to Defendant.

WALLACE J. STEVENSON, Referee, Philadelphia District

APPENDIX D-9

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF LABOR AND INDUSTRY

BUREAU OF WORKER'S COMPENSATION

1171 South Cameron Street, Room 103

Harrisburg, PA 17104-2501

(717) 783-5421

September 12, 1989

Mr. Rusbeiro Messa

7052 Rutland Street

Philadelphia, PA 19149

Dr. Mr. Messa:

This is in response to your request for a certified copy of an Injury Report indicating a date of injury of March 28, 1986.

A search of our files indicates no record of a report ever being submitted with this date of injury,

Very truly yours,

Frederick J. Woodard, Chief Records Management Division

APPENDIX E-1

CONSTITUTIONAL PROVISIONS

42 U.S.C. Sect. 1983. No State shall make or enforce any law which shall abridge the privilege or immunity of citizen of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Constitution, Article I Section 11. All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Pennsylvania Constitution, Article III, Section 18:

> The General Assembly may enact laws requiring the payment . . . of reasonable compensation for injuries to employees arising in the course of their employment . . . ; but in no other cases shall the General Assembly limit the amount to be recovered for injuries . . .

APPENDIX E-2

Pa. R.C.P. Rule 1028(b) All preliminary objections shall be raised at one time. They may be inconsistent . . .

Pa. R.C.P. Rule 1028(d): If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order . . .

Pa. R.A.P. Rule 907. The prothonotary of the appellate court shall upon receipt of any such counsel for other parties, filed within 30 days after filing the notice of appeal, strike off or correct the record of appearances, Thereafter an entry of appearance may be withdrawn only by leave of the court.

THE CONSENT DECREE. *Baksalary v. Smith*, 591 F.Supp.1279, (1984), at 1294: the automatic supersedeas provision of the Pennsylvania Workmen's Compensation Act, authorizes a procedure which violates the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. Any invocation by any defendant of the automatic supersedeas provision after this date in order to terminate an individual's workmen's compensation benefits without prior notice or predetermination opportunity to be heard is hereby DECLARED to be a deprivation of that

individual's property without due process of law. March 15, 1984 Order at paragraph 1(b)

Workmen's Compensation, Rules and Regulations: Sect. 121.17

If an injured employee has recovered from his injury so that he has regained his full earning power, and so that all disability due to the injury has terminated, a final receipt may be fully prepared for presentation to the employee to sign.

Section 602: In case of personal injury all claims for compensation shall be forever barred, unless within three years after injury, the parties shall have agreed upon compensation payable under this Article.

WORKMEN'S COMPENSATION TITLE 77 PENNSYLVANIA STATUTES

Section 994; Act Section 438. *An employer shall report all injuries* received by employees in the course of or resulting from their employment immediately *to the employer's insurer* . . . ."

An employer shall report such injuries to the Department of Labor and Industry by filing *directly* with the department . .

. within three days after the date of injury . . . . A *copy of this report shall be mailed to the employer's insurer forthwith.*" (emphasis added)

Section 717.1; Act Section 406.1 *The employer and insurer* shall promptly investigate each injury reported or known to the employer and shall *proceed* promptly to commence the payment of compensation due either pursuant to an *agreement upon the compensation payable* or a notice of compensation payable as provided in section 407, on forms prescribed by the Department and furnished by the insurer. The first installment of compensation shall be paid not later than the twenty-first day after the employer has knowledge or notice of the employee's disability . . . ."

"*If the insurer controverts* the right to compensation it shall promptly notify the employee or his dependent on a form prescribed by the department stating the grounds upon which the right to compensation is controverted and shall forthwith furnish a copy or copies to the department. (emphasis added)

APPENDIX E-5

Section 731; Act Section 407. On or after the seven days after any injury shall have occurred, the employer or insurer and employee or his dependents may agree upon the compensation payable to the employee or his dependent under this Act; but *any agreement made prior* to the seven days after the *injury* shall have occurred, or permitting a computation of payments contrary to the provisions of this Act, or varying the amount to be paid or the period during which compensation shall be payable as provided by this Act, *shall be wholly null and void.* It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made. Where payment of compensation is commenced without an agreement, the employer or insurer shall simultaneously give notice of compensation payable to the employee or his dependent, on a form prescribed by the department, identifying such payments as compensation under this Act and shall forthwith furnish a copy or copies to the department as required by rules and regulations . . . (emphasis added).

APPENDIX E-6

Section 431, ACCEPTANCE OF PROVISIONS. ARTICLE III

Act Section 301(a). Every employer shall be liable for compensation for personal injury to, or for the death of each employee, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article."

Section 481(a); Act 303(a). "The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees . . . . or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108."

Section 501; Act Section 305. *Every employer* liable under this Act to pay compensation *shall insure the payment of compensation* in the State Workmen's Insurance Fund, *or in any insurance company*, or mutual association or company, authorized to insure such liability in this Commonwealth,

unless such employer shall be exempted by the department from such insurance. *Such insurer shall assume the employer's liability* hereunder and shall be *entitled to all of the employer's immunities and protection* hereunder . . . . Any *employer who fails to comply with the provisions* of this section for every such failure, shall, upon summary conviction before any official of competent jurisdiction, be sentenced to pay a fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) and costs of prosecution, or imprisonment for a period of no more than (1) one year, or both. *Every day's violation shall constitute a separate offense . . . . When any employer fails to secure the payment of compensation under this Act as provided in sections 305* and 305.2, *the injured employee* or his dependents *may proceed either under this act or in a suit for damages at law as provided by article II.* (emphasis added).

DAMAGES BY ACTION AT LAW. WORKMEN'S COMPENSATION ACT - ARTICLE II

Section 41; Act Section 201. That in any action brought to recover damages for personal injuries to an employee in the course of his employment, or for death resulting from that injury, it shall not be a defense:

(a) that the injury was caused in whole or in part by the negligence of a fellow employee; or

(b) that the employee had assumed the risk of injury; or

(c) that the injury was caused in any degree by the negligence of such employee.

Section 71; Act Section 204. "No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund, shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof . . ."

Section 774; Act section 413(a). The filing of *a petition to terminate or modify a notice of compensation payable* or a

compensation *agreement* or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extend as the facts alleged in the petition would, *if proved*, require only when such petition alleges *that the employee has returned to work* at his prior or increased earnings, or where the petition alleges that the *employee has fully recovered* and is accompanied by an *affidavit* of a *physician* on a form prescribed by the department to the effect which is based upon *an examination made within fifteen days of the filing of the petition. In any other case*, a petition to terminate or modify a compensation agreement or other payment arrangements or award as provided in this section *shall not automatically operate as a supersedeas* but may be designated as a request for supersedeas, which may then be granted at the discretion of the referee hearing the case. A supersedeas shall serve to suspend the payment of compensation in whole or to such extend as the facts alleged in the petition would if proved, require. The referee hearing the case shall rule on the request for a supersedeas as soon as possible and may

approve the request if proof of a change in medical status, or proof of any other fact which would serve to modify or terminate payment of compensation is submitted with the petition. The referee hearing the case may consider any other fact which he deems to be relevant when making the decision on the supersedeas request and the decision shall not be appealable." (emphasis added)

Section 531; Act Section 306(f)(1). The employer shall provide payment for reasonable surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines, and supplies, as and when needed . . .

Section 992; Act 436. The secretary, any referee, and any member of the board shall have the power to issue subpoenas to require the attendance of witnesses and/or the production of books, documents and papers pertinent to any hearing. Any witness who refuses to obey such summons or subpoenas, or who refuses to be sworn or affirmed to testify, or who is

guilty of any contempt after notice to appear may be punished as for contempt to court . . . ."

Supreme Court, U.S.
FILED
JAN 22 1992
OFFICE OF THE CLERK

No. 91-1070

In The

Supreme Court of the United States

October Term, 1991

RUSBEIRO MESSA,

Petitioner,

vs.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF FOR RESPONDENT NORTHBROOK INSURANCE COMPANY

JOSEPH A. VENUTI, JR.
SWARTZ, CAMPBELL & DETWEILER
Attorneys for Respondent
Northbrook Insurance Company
100 South Broad Street
1700 Land Title Building
Philadelphia, Pennsylvania 19110
(215) 564-5190

1483
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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of the United States has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a) and Supreme Court Rule 10 where the issues raised on appeal in the state court concerned whether the trial court properly reconsidered and reversed its interlocutory order denying respondent's preliminary objections to petitioner's complaint finding, in dismissing petitioner's complaint, that an employee, under Pennsylvania law, cannot maintain a cause of action in tort against his employer or employer's workmen's compensation insurance carrier for allegedly obstructing his right to workmen's compensation benefits in mishandling the administration of his claim arising from a work-related injury and where no issues were raised in petitioner's complaint or on appeal questioning a United States statute or challenging a Pennsylvania statute as unconstitutional or contrary to the laws of the United States or asserting a special right under the Constitution, treaties or statutes of the United States.

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No. 91-1070

In The

Supreme Court of the United States

October Term, 1991

RUSBEIRO MESSA,

Petitioner,

vs.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF FOR RESPONDENT NORTHBROOK INSURANCE COMPANY

STATEMENT OF JURISDICTION

Petitioner asserts 28 U.S.C. § 1257(a) as a basis for jurisdiction. However, since petitioner failed to raise any issues of a federal nature in state court, § 1257(a) does not provide

jurisdiction in this case.

STATEMENT OF THE CASE

Petitioner, Rusbeiro Messa, *pro se,* filed a writ of summons against respondents, Frankford Quaker Grocery Company (hereinafter "Frankford") and Northbrook Insurance Company[1] (hereinafter "Northbrook") on December 9, 1988, and then filed a complaint against the same respondents on December 15, 1988 (2a, 9a-15a)[2]. Petitioner, in his complaint, raised claims in tort against both respondents for taking steps to terminate his workmen's compensation benefits for a December 27, 1985 work-related hernia injury, for not reporting a second injury to his right knee on March 28, 1986, to the appropriate authorities and/or for respondents' failure to properly administer his claim on the second injury (9a-15a). It is evident that petitioner's lawsuit was solely related to his ability and claim to recover benefits under the Workmen's Compensation Act, 77 P.S. § 1, *et seq.*, under Pennsylvania law.

In response to the complaint, the respondents, represented by the same law firm, Post & Schell, P.C., filed preliminary objections on January 9, 1989, asserting a demurrer based on the employer and insurance carrier exclusivity defense under 77 P.S. § 481(a) and 77 P.S. § 501, respectively, and for improper service (2a). Although petitioner filed an "objection" to respondents' preliminary objections on January 19, 1989, he did

---

1. Petitioner sued Northbrook Insurance Company. However, the proper name for respondent is Northbrook Property & Casualty Insurance Company. The parent corporation of Northbrook Property & Casualty Insurance Company is Allstate Insurance Company. Sears is the parent corporation of Allstate Insurance Company. Northbrook Property & Casualty Insurance Company does not have any subsidiaries.

2. Page numbers "__a" refer to pages in the Appendix, *infra*.

not raise therein any procedural objection to the respondents' assertion of the exclusivity or immunity defense by way of preliminary objection pursuant to Pennsylvania Rule of Civil Procedure 1033 (2a). In essence, however, petitioner's "objection" was nothing more than a response to the merits. On or about February 7, 1989, respondents filed a motion to determine the preliminary objections with motion court. It was at that point that Northbrook decided to retain separate counsel from Frankford and Northbrook's new counsel, Swartz, Campbell & Detweiler, entered an appearance on behalf of Northbrook on February 15, 1989 (4a). On February 16, 1989, Northbrook filed a supplemental set of preliminary objections to petitioner's complaint in the form of a motion to strike or, in the alternative, in the form of a motion for a more specific pleading (3a). On that same day, Northbrook filed its motion to determine supplemental preliminary objections with motion court (3a). Petitioner filed a response to Northbrook's motion on March 27, 1989.

Upon consideration of the respondents' motions, the lower court overruled the preliminary objections and supplemental preliminary objections in an order dated April 12, 1989 (4a, 16a). In paragraph 2 of the order, the lower court expressed the opinion that petitioner's complaint stated a cause of action with reliance placed on *Kuney v. PMA Insurance Company,* 379 Pa. Super. 598, 550 A.2d 1009 (1988). On May 18, 1989, Northbrook filed an answer with new matter to petitioner's complaint and crossclaim (5a). On June 8, 1989, petitioner filed a motion for summary judgment which was denied by the lower court in an order dated August 14, 1989 (5a-6a).

Before denying petitioner's motion for summary judgment, however, the lower court, *sua sponte,* reconsidered the respondents' preliminary objections and supplemental preliminary objections and sustained them in two (2) separate orders dated July 26, 1989 (5a-6a, 16a-17a). In the order related to the original

preliminary objections filed on behalf of both respondents, the lower court granted a demurrer for failure to state a cause of action and for improper service (5a, 18a). In the second order, related to the supplemental preliminary objections filed by Northbrook only, while the lower court had entered a demurrer in favor of Northbrook in the other order, in this order the petitioner's complaint was stricken with leave to file a more specific pleading (6a, 20a). Petitioner never filed an amended complaint (1a-8a).

Petitioner then filed an appeal to the Commonwealth Court of Pennsylvania although the order or orders he was appealing was not clear since both orders were docketed on August 2, 1989 (6a). This ambiguity was not clarified until he filed his brief with the Superior Court of Pennsylvania wherein petitioner attached and referred only to the order granting the demurrer. On October 11, 1989, the lower court filed its opinion with motion court (7a). In this opinion, the trial court stated that when it entered the subsequent set of orders on July 26, 1989, that "it was under the misapprehension that defendants' [respondents] corresponding preliminary objections had not yet been disposed of." (22a). The trial court also determined that while the subsequent orders could be viewed as reconsideration, it had no jurisdiction to reconsider the original order beyond the thirty (30) day time period and, for this proposition, relied upon Pennsylvania Rules of Appellate Procedure 903(a) and 1701(b)(3) (22a). The trial court expressed this statement even though the original order was interlocutory. Consequently, the trial court found that the original order of April 12, 1989, denying the respondents' preliminary objections, should control (22a).

In an order dated October 16, 1989, the Commonwealth Court of Pennsylvania transferred this appeal to the Superior Court of Pennsylvania (23a). Briefs were submitted by petitioner and respondents to the Superior Court of Pennsylvania and oral

argument was held before that court on March 27, 1990. In a judgment and memorandum opinion filed on September 28, 1990, the Superior Court of Pennsylvania affirmed the trial court's order sustaining Northbrook's preliminary objections in the nature of a demurrer dismissing petitioner's complaint (25a-35a). In affirming the trial court's order, insofar as Northbrook was concerned, the Superior Court relied upon the reversal of its decision in *Kuney, supra,* by the Supreme Court of Pennsylvania in *Kuney v. PMA Insurance Company,* 525 Pa. 155, 578 A.2d 1285 (1990). Petitioner then filed an application for reargument on October 12, 1990. In an order dated October 30, 1990, petitioner's application for reargument was denied by the Superior Court of Pennsylvania (36a). Petitioner then filed a petition for allowance of appeal on November 29, 1990, with the Supreme Court of Pennsylvania (8a). In a letter dated June 28, 1991, petitioner was advised by the Chief Clerk of the Supreme Court of Pennsylvania that his petition for allowance of appeal had been denied on June 24, 1991 (37a). On July 5, 1991, petitioner filed an application for reconsideration of the denial of his petition for allowance of appeal with the Supreme Court of Pennsylvania. In a letter dated September 10, 1991, from the Assistant Chief Clerk of the Supreme Court of Pennsylvania, petitioner was advised that his application for reconsideration had been denied on September 3, 1991 (39a). Petitioner originally filed his petition for writ of certiorari on December 2, 1991, which was rejected by the Chief Deputy Clerk of the Supreme Court of the United States for failure to comply with certain procedural rules in a letter dated December 12, 1991. Petitioner refiled his petition for writ of certiorari on December 24, 1991.

REASONS FOR DENYING THE WRIT

Pursuant to Rule 14(h) of the Rules of the Supreme Court of the United States, petitioner was required in the statement of the case to specifically identify each and every instance at all levels

of the state court where he raised those federal questions which are sought to be reviewed in his petition. Rule 14(h) also requires "specific reference to the places in the record where the matter appears." Further, Rule 14(j) mandates that the petitioner set forth "[a] direct and concise argument amplifying the reasons relied on for the allowance of the writ." In complying with Rule 14(j), a petitioner must state "special and important reasons" consistent with Rule 10 in order for this Court to grant a petition for a writ of certiorari.

It is clear that petitioner has failed to address the requirements of either Rule 14(h) or Rule 14(j). On the contrary, this Court does not have jurisdiction of this matter pursuant to § 1257(a) since petitioner failed to properly raise any federal issues in state court. Upon a review of petitioner's complaint, the issues raised by petitioner on his appeal to the Superior Court of Pennsylvania, and in his petition for allowance of appeal to the Supreme Court of Pennsylvania, it is readily seen that no federal questions were raised or considered by the state court. It was not until petitioner filed his application for reconsideration of denial of his petition for allowance of appeal, that he first raised certain issues under the Fifth and Fourteenth Amendment of the United States Constitution in a vague and oblique challenge to the Pennsylvania Workmen's Compensation Act, 77 P.S. § 1, *et seq.*

In his complaint, petitioner alleged that the respondents intentionally conspired to prevent him from recovering workmen's compensation benefits concerning work-related injuries by failing to report a March 28, 1986 knee injury to the appropriate authorities in Pennsylvania and by seeking termination of his benefits related to prior injuries. The allegations, theories and claims raised by petitioner in his complaint were exclusively tied into state law. No specific allegations concerning a federal question were asserted by petitioner in his complaint. The preliminary objections, in the nature of a demurrer, raised by respondents

and sustained by the trial court, challenged petitioner's claim as unsupported by state law. No federal issues were asserted by petitioner or respondents in regard to the trial court's ruling on the preliminary objections.

In his brief to the Superior Court of Pennsylvania, petitioner phrased the questions involved on appeal as follows:

> 1. Where plaintiff files Motion for summary judgment and defendants file answers, was error of the court below sustaining defendants' preliminary objections after having already been ruled?
>
> (Answer: Affirmative by lower court Opinion).
>
> 2. Did Order frustrated [sic] Plaintiff's motion for summary judgment?
>
> 3. Where worker sustains personal injuries on and out of the job, and when employer and insurance carrier rejects provissions [sic] of the Act, are employer and insurance carrier immune under the Act for damages resulted on the job and therefrom?

In his brief, petitioner did not address or discuss any issues remotely related to a federal question and none were decided by the Superior Court which stated the issues thusly:

> (1) Whether the trial judge erred when he *sua sponte* issued orders sustaining appellees' [respondents] preliminary objections after already having denied them; and

> (2) Whether an employee may maintain an action in tort against an employer and its insurance carrier for interference with his right to receive workmen's compensation benefits and intentional infliction of emotional distress, or whether such action is barred by the Workmen's Compensation Act, Pa. Stat. Ann. Tit. 77, §§ 1-676 (Purdon Supp. 1990).

Similarly, in petitioner's petition for allowance of appeal to the Supreme Court of Pennsylvania, although petitioner generally alluded to certain provisions of the United States Constitution and cited a federal and district court decision, no distinct issue was raised concerning a federal question. In phrasing the issue before the Supreme Court, petitioner stated as follows:

> Where employee sustains personal injuries on the job, and where employee alleges that employer and/or insurance carrier knowingly and intentionally did not comply with liability provissions [sic] of the Workmen's Compensation Act, or, allegedly, accepted liability without specific agreement of compensation under a previous agreement for distinct and separate injuries, employee is barred to claim for damages on the job, and thereafter, by common law action.

In denying the petition for allowance of appeal and, in its reconsideration, the Supreme Court of Pennsylvania did not rule on any question of a federal nature. Under Pennsylvania law, petitioner's failure to raise any federal issues before the trial court in his complaint or otherwise and before the Superior Court of Pennsylvania, waived those issues. *Consumer Party of Pennsylvania v. Commonwealth,* 510 Pa. 158, 507 A.2d 323 (1986) (issue could not be raised on appeal where it does not appear

in complaint); *Gerace v. Holmes Protection of Philadelphia,* 357 Pa. Super. 467, 516 A.2d 354 (1986), *appeal denied,* 515 Pa. 580, 527 A.2d 541 (constitutional issue waived where not raised first in trial court); *City of Philadelphia v. Gray,* 133 Pa. Cmwlth. 396, 576 A.2d 411 (1990) (constitutional issue waived where not raised first in trial court). This Court has held that the failure to timely and properly raise federal issues in state court will bar this Court's consideration of those issues in a petition for a writ of certiorari. *Webb v. Webb,* 451 U.S. 493, 101 S. Ct. 1889, 68 L. Ed. 2d 392 (1981). If the federal issue is not decided by the state court, then this Court has no power to consider the issues. *Street v. New York,* 394 U.S. 576, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969); *see also, State v. Rinehart,* 444 U.S. 1088, 100 S. Ct. 1049, 62 L. Ed. 2d 775 (1979). It has also been held that failure to conform to state procedures in raising federal issues will constitute an adequate and independent state ground barring review by this Court. *Michigan v. Tyler,* 436 U.S. 499, 98 S.Ct. 1942, 56 L. Ed. 2d 486 (1978). For all intents and purposes, petitioner is raising, for the first time, federal issues in seeking a writ of certiorari. This cannot be done. *See Monks v. New Jersey,* 398 U.S. 71, 90 S. Ct. 1563, 26 L. Ed. 2d 54 (1970); *see also, Street v. New York, supra.*

Neither the trial court's opinion, nor the opinion issued by the Superior Court of Pennsylvania, show that any consideration was given to any federal issues raised by petitioner. On the contrary, the trial court, the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania, in denying petitioner's petition for allowance of appeal, merely entertained petitioner's state law claim in tort arising from the respondents' alleged misconduct in obstructing petitioner's right to collect certain workmen's compensation benefits in the mishandling of the administration of his claim and found that, under Pennsylvania law, no such action was permitted against an employer or its insurance carrier. There can be no argument that, factually and legally, petitioner's

claim arises, exclusively, under state law as litigated in state court and, without a federal question, petitioner has failed to substantiate this Court's jurisdiction over this matter pursuant to § 1257(a).

Further, without an appropriate jurisdictional basis, petitioner obviously cannot satisfy those considerations expressed in Rule 10(b) and (c). Again, without a federal question and in the absence of a state court deciding "an important question of federal law," there is no basis to warrant granting this petition for a writ of certiorari. Clearly, the state courts of Pennsylvania in this case have not decided a federal question in conflict with another state court or the United States Court of Appeals, and have not decided "an important question of federal law" which this Court should address for the first time. Furthermore, this case does not present a federal question decided by a state court in conflict with decisions issued by this Court.

CONCLUSION

Based on the foregoing, petitioner has failed to establish this Court's jurisdiction pursuant to § 1257(a) since he has failed to properly raise federal issues in state court which further warrants no consideration to his petition for a writ of certiorari by this Court pursuant to Rule 10 of the Rules of Supreme Court of the United States.

Respectfully submitted,

JOSEPH A. VENUTI, JR.
SWARTZ, CAMPBELL &
DETWEILER
Attorneys for Respondent
Northbrook Insurance Company

Date: January 22, 1992

APPENDIX A — DOCKET ENTRIES

88 DEC 01408 CIVIL ACTION

RUSBEIRO MESSA
VS.
FRANKFORD QUAKER GROCERY
AND
NORTHBROOK INSURANCE COMPANY

* * *

Rusbeiro Messa
7052 Rutland St.
Philadelphia, PA 19149
Attorney Pro Se

Frankford Quaker Grocery
I Street and Erie Ave.
Philadelphia, PA 19124
Attorney: Walter J. Timby, III

Northbrook Insurance Company
P.O. Box 548 1006 W. 9th St.
King of Prussia, PA 19406
Attorneys: Michael D. Schaff
Curtis P. Cheyney III

* * *

12/09/88	03:04P	Filing Atty - 000007 Pro Se. Prothy $55.50. Amount at Issue More Than $20,000.00.

Appendix A

12/09/88 03:04P Praecipe to Issue Writ Filed.
Writ of Summons Issued.
Jury Trial Waived.

(ENTERED 12-12-88 09.33 ROC PROB)

12/15/88 02:09P Complaint With Notice to Defend, Within Twenty (20) Days After Service, in Accordance With Rule 1018.1 Filed.

(ENTERED 12-29-88 01.30 JAN PRO4 023)

01/09/89 03:27P Appearance of Michael D. Schaff Esq.
For Defendant Frankford Quaker Grocery.
For Defendant Northbrook Insurance Company.
Fee Paid $19.00.

(ENTERED 01-09-89 03.27 JIM PRON 013)

01/09/89 03:27P Jury Trial Demanded
By Defendant Frankford Quaker Co. and Northbrook Ins. Co. and 12 Jurors Requested.
Fee Paid $54.00 Filed.

(ENTERED 01-09-89 03.28 JIM PRON 050)

01/09/89 03.28P Defts' Preliminary Objections Are Filed.

(ENTERED 01-09-89 03.28 JIM PRON 060)

01/19/89 11:11A Pltf's Objections to Defts Preliminary Objections Filed.

(ENTERED 02-02-89 10.03 ROC PROB 060)

Appendix A

12/14/88 11:00A Served Frankford Quaker Groc. (Fleming Co.).

(ENTERED 02-11-89 12.13 SF1 PROA 076)

02/16/89 03:41P Motion to Determine Supplemental Preliminary Objections of Deft Northbrook Ins. Co. to Pltf's Complaint in the Form of a Motion to Strike Pursuant to Pa.R.C.P. 1017(B)(2) or, in the Alternative, in the Form of a Motion for a More Specific Pleading Pursuant to Pa.R.C.P. 1017(B)(3). Filed.

(ENTERED 02-16-89 03.42 RDC PRO7 053)

02/16/89 10:11A Supplemental Preliminary Objections of Deft Northbrook Ins. Co. to Pltfs' Complaint in the Form of a Motion to Strike Pursuant to Pa. Rule of Civil Procedure 1017 B or in the Alternative in the Form of a Motion for a More Specific Pleading Pursuant to Pa. Rule of Civil Procedure 1017 B Filed.

(ENTERED 02-24-89 11.23 ROC PROB 060)

12/27/88 09:15A Served Northbrook Insurance Company. By/Deputize Service.

(ENTERED 03-31-89 05.37 JDW PRO2 076)

Appendix A

02/15/89 12:41P	Appearance of Curtis P. Cheyney III Esq. For Defendant Northbrook Insurance Company Fee Paid $19.00 Jury Trial Demanded.

(ENTERED 04-25-89 09.30 PLS PRO5 013)

05/02/89 10:10A	Ordered, That Deft's Preliminary Objection Based on Service Upon Deft., Northbrook Ins. Co., Is Denied, Since No Service Is Recorded Upon the Docket Entries to Strike . . . . Defendants' Preliminary Objection in the Nature of a Demurrer is Denied, Pltf's Complaint Alleges a Cause of Action . . . . Defendant Northbrook Ins. Co's Supplemental Preliminary Objections Are Dismissed . . . Pa.R.C.P. 1028-B Requires That All Preliminary Objections Be Raised at One Time. . . . By the Court - Lehrer J. 4-12-89 . . . . Notice Under Rule 236.

(ENTERED 05-02-89 11.28 MJM PROP 061)

05/24/89 10:10A	Ordered, That the Motion for Reconsideration of Deft., Frankford Quaker Grocery Is Denied . . . . By the Court - Lehrer J. 5-8-89. Notice Under Rule 236.

(ENTERED 05-24-89 09.22 MJM PROP 061)

Appendix A

05/18/89 02:27P Deft Northbrook's Answer, New Matter and New Matter Cross-Claim to Pltf's Complaint With Notice to Plead Filed.

(ENTERED 06-07-89 04.27 LMP PROP 006)

06/08/89 03:57P Pltf's Motion for Summary Judgment Under PaRCP 1035 Is Filed . . . Fees Pd. - $12.00.

(ENTERED 06-08-89 03.59 JIM PROM 056)

05/26/89 09:05A Deft Frankford Quaker Grocery's Answer to Pltf's Complaint With New Matter, With Notice to Plead . . . Filed.

(ENTERED 06-15-89 09.09 MJM PROP 006)

08/02/89 10:10A Upon Consideration of the Preliminary Objections of the Defts to Plaintiff's Complaint and Any Answers Thereto It Is Ordered that Plaintiff's Complaint Is Dismissed for Failure to State a Viable Cause of Action and for Improper Service.
Approved by Judge Lehrer on 7/26/89 Notice Under Rule 236.

(ENTERED 08-02-89 03.58 MMB PROJ 061)

08/02/89 10:10A Upon Consideration of the Preliminary Objections of Deft Northbrook Ins. Co. and Plaintiff's Response Thereto It Is Ordered That Plaintiff's Complaint is Stricken with Leave to

Appendix A

Plaintiff to File a More Specific Pleading Pursuant to Pa Rule of Civil Procedure 1017 B 3
Approved by Judge Lehrer on 7/26/89
Notice Under Rule 236.

(ENTERED 08-02-89 04.07 MMB PROJ 061)

08/18/89 10:10A Upon Consideration of Plaintiff's Motion for Summary Judgment and Response Thereto It Is Ordered That Plaintiff's Motion for Summary Judgment Is Denied.
Approved by Judge Lehrer on 8/14/89
Notice Under Rule 236.

(ENTERED 08-18-89 08.17 MMB PROJ 061)

08/31/89 10:10A **********
Notice of Appeal to the Commonwealth Court Filed.
Notice of Appeal Is Hereby Given That Rusbeiro Messa, Plaintiff, Appeals to the Commonwealth Court From the Order Docketed on 08/02/89
Date Signed 07/26/89 by Judge Lehrer.
Proof of Service Filed.
****

(ENTERED 08-31-89 02.44 JCM PROU 082)

09/11/89 04:48P Preliminary Objections of Deft Northbrook Insurance Co., to Pltf's Amended Complaint Filed.

(ENTERED 09-12-89 08.46 DGV PROK 060)

Appendix A

09/28/89 04:23P Praecipe to Withdraw the Preliminary Objections of Deft Northbrook Insurance Co. Filed.

(ENTERED 10-02-89 03.12 RAY PROF 053)

10/05/89 03:06P Plaintiff's Objection to Deft Northbrook's Praecipe to Withdraw Preliminary Objections . . . . Filed.

(ENTERED 10-06-89 11.47 MJM PROP 060)

10/18/89 10:10A Opinion Filed on 10/11/89.
J. Samuel M. Lehrer
Notice Under Rule 236.

(ENTERED 10-18-89 01.06 JCM PROU 062)

10/27/89 10:10A Motion Dismissed
See Order
Approved by Judge Lehrer on 10/25/89
Notice Under Rule 236.

(ENTERED 10-27-89 02.22 MMB PROJ 061)

11/03/89 10:10A Ordered That Petition Dismissed . . .
Matter on Appeal
Judge Lehrer 10-30-89
Notice Under Rule 236.

(ENTERED 11-03-89 09.52 JAN PRO4 061)

11/14/89 10:10A Record Certified to the Superior Court . . . 89-PHL-1715.

(ENTERED 11-14-89 09.20 JCM PROU 071)

Appendix A

02/08/90 04:23P	Withdrawal of Michael D. Schaff Esq. for Defendant Frankford Quaker Grocery. Appearance of Walter J. Timby, III Esq. Represents the Above Named.

(ENTERED 02-09-90 11.24 ANG PROA 013)

07/09/91 04:11P	Certificate of Contents of Remanded Record and Notice to Remand, Judgment Is Affirmed Filed.

(ENTERED 07-10-91 01.06 NTD PRO7 070)

09/18/91 09:29A	Notice of Filing of Petition for Allowance of Appeal to the Supreme Court of Pennsylvania - Eastern District, No. 1043 E.D. Allocatur Docket 1990. 9/3/91. Order: Petition Denied. Filed.

(ENTERED 09-20-91 02.55 PJV PROX 070)

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* * * END OF DOCKET * * *

APPENDIX B — COMPLAINT

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION
TERM, DECEMBER 1988

No. 1408

PLAINTIFF:

RUSBEIRO MESSA

PRO SE

VS.

DEFENDANTS:

FRANKFORD QUAKER GROCERY

AND

NORTHBROOK INSURANCE COMPANY

COMPLAINT

AND NOW, comes Rusbeiro Messa, hereinafter referred as the Plaintiff, pro se, and files this Complaint against the Defendants, and each of them and in support alleges and avers the following:

Appendix B

I. Preliminary Statement

1. Plaintiff Messa brings this Action, pursuant to Pa.R.C.P Rule 1001 et seq., against his employer and its Insurance carrier, mentioned above as Defendants, to obtain judgment to provide medical treatment, compensation and monetary relief as provided in Title 77 P.S. Section 513, and by Workers' Compensation Order (attached) as Exhibit P 1), for damages that were result of each Defendant gross negligence, malice and Intentional Tort and for those damages not compensated by Workers' Compensation Act. Since Defendant employer's premisses are being sold and failed to report knee injury (probably total disability) to Labor Department, Plaintiff requests for consideration of Mechanics Lien, pursuant to Pa.RCP Rule 1651, until employer accepts liability by agreement.

II. Parties

2. Plaintiff Rusbeiro Messa, is a 38 years old individual, divorced and two children ages 7 and 14, who resides at 7052 Rutland St. in Philadelphia.

3. Defendant, Frankford Quaker Grocery, hereinafter also referred as Defendant employer, is a food supermarket distribuitor registered and organized under the laws of the Commonwealth of Pennsylvania, and its warehouse and offices are located at "I" Street and Erie Ave., Philadelphia.

4. Defendant, Northbrook Insurance Company, hereinafter referred as Defendant Insurance carrier, is registered in the Commonwealth of Pensylvania as an insurer licensed to transact the business of workers' compensation insurance. It is located at 1006 W. 9th Ave King of Prussia, PA.

Appendix B

5. Plaintiff Messa has been working for Defendant Employer since June 1977 as a warehouseman order selector, pulling and pushing 6' high loaded carts, walking, squashing, climbing, bending, lifting from 1 to 72 pounds, fork lift and tractor machine operator.

6. From 1983 to 1986 Plaintiff suffered the following injuries:

a) Dec. 3, 1982 while lifting, 70 lb. boxes, pain in left testicle with diagnosis of groin pull.

b) Aug. 21, 1984 while lifting, aggravation of previous injury. Compensation was denied despite doctor's statement "heavy work aggravates symptoms", Plaintiff returned to work sustaining a series of accidents and injuries.

c) Nov. 12, 1984, injury on right thumb. Compensation denied, returns to work but due to pain Plaintiff has surgery on R. thumb March 1985.

d) Dec. 27, 1985, aggravation of testicles symptoms, left inguinal hernia, low back pain. Plaintiff must return to heavy work, light work is denied despite surgeon scheduled surgery for hernia repair.

e) March 28, 1986, while lifting, aggravation of testicles symptms and hernia, concequently sustained other injury on right knee, requiring surgery to remove medial meniscus and tear of lateral plica. Plaintiff has not work since then.

7. Defendant Insurance Carrier, warned by post hernia

surgery complications, maliciously sent Plaintiff Final receipt of Compensation just three days after hernia surgery, Jan 20 1986

8. In May 1987, by petition of Defendant Employer, compensation was cut off including medical treatment, taking advantage of a conflict of interest when one of Defendant's attorneys was related to Referee, forcing plaintiff to loose some and sell others personal items to pay medical bills, during 1 year.

9. According to investigations, Defendant Employer failed to report knee injury to Labor Department in violation of the Pa. Accident Reporting Act, and declined to present Plaintiff's factory records under subpaena.

10. Second knee surgery was scheduled by surgeon in July 1987, but it was cancelled until one year later because Defendants declined to pay for it.

11. In Jan. 23, 1988 Plaintiff files claim petition of knee injury to Labor Dpt.

12. In March 1988 Plaintiff is represented for the fift time by legal counsel.

13. In June 7 1988 Referee Orders reinstatement of full compensation.

14. Despite Referee's Order Defendants refuse to pay medical treatment recomended by physicians, prolonging pain and suffering and creating aggravation, frustration, depresion and mental anguish. Biweekly checks are paid.

15. In Dec. 7 1988 Physician recommends Plaintiff

hospitalization to relief depresion and to control pain; Defendant Insurance refused to pay, again.

16. Physicians and pain clinic recommended acupuncture treatment but Defendant Insurance declined to pay.

17. As an alternative to control pain doctors provided Plaintiff different narcotics and antidepressing medicine, creating new symptoms.

18. By refusing to pay proper medical treatment, by intimidating those willing to provide it, and by several violation of law, Defendants engaged in a campaign to obstruct justice and medical treatment to protect each other's interests, and to stop Plaintiff from obtaining precise evidence to support his disability and to cover up the non reported knee injury's liability, resulting in the most analogous to Pennsylvania Tort Action for intentional inflection of pain and suffering and mental distress.

19. By Referee's Order and award of injury in Aug. 1984, by doctors recommended work restrictions and by clinical tests (all provided to Defendants), Defendant employer and Defendant Insurance Carrier assumed the risk of injury.

20. Plaintiff was exploited by his supervisors to accept "deals" of 8 to 10 hours work to be done in 5 or 7 hours despite Plaintiff's restrinctions to work.

21. Plaintiff is entitled to: present and future injury related medical treatment paid by Defendants; aprox. $9000 in medical bills paid by Plaintiff; aprox. $10.000 for unpaid medical bills; weekly compensation from May 1987 to Jan. 1988 not paid yet; compensation as provided by Title 77 P.S. Section 511-514 and

under the Act, article III Section 306c; interests and penalties, cost of Prothonotary.

22. Plintiff requests hearing for further assessment of damages.

23. As a direct result of each Defendant's gross negligence, tort, wanton, malice and abuse, Plaintiff has suffered and will continue to sffer from permanent groin, testicles and knee pain, with future aggravation by neuritis, epidydimitis, varicocele and arthritis.

24. As a direct and proximate result of the damages by Defendants' intentional tort and gross negligence, Plaintiff has and will have impediment to perform work and other activities requiring strain or walking, sports, sex and other pleasures of life.

WHEREFORE: Plaintiff, Rusbeiro Messa, pursuant to Title 77 P.S. Section 513 and the Pa. Rules of Civil Procedures, demands judgment against Defendant Frankford Quaker Grocery and its insurance carrier, Defendant Northbrook Insurance Company for damages as a resullt of intentional tort and compensation owed to him and interest and penalties, with a total in excess of $100.000

s/ Rusbeiro Messa
Rusbeiro Messa

Appendix B

VERIFICATION

The facts set forth in this Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

s/ Rusbeiro Messa
Rusbeiro Messa
Plaintiff Pro se

7052 Rutland St.
Phila., PA. 19149

APPENDIX C — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED APRIL 12, 1989

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

DECEMBER TERM, 1988

NO. 1408

RUSBEIRO MESSA

vs.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE COMPANY

ORDER

AND NOW, this 12th day of April, 1989, upon consideration of the preliminary objections of defendants, Northbrook Insurance Company, and Frankford Quaker Grocery, and plaintiff's response thereto, it is hereby ORDERED and DECREED:

1. Defendant's preliminary objection based on service upon defendant, Northbrook Insurance Company, is denied, since no service is recorded upon the docket entries to strike.

2. Defendants' preliminary objection in the nature of a demurrer is denied. Plaintiff's complaint alleges a cause of action. Compare *Kuney v. PMA*, 550 A.2d 1009 (Pa. Super. 1988).

3. Defendant Northbrook Insurance Company's Supplemental preliminary objections are dismissed. Pa. R.C.P. 1028(b) requires that all preliminary objections be raised at one time.

Appendix C

BY THE COURT:

s/ Samuel M. Lehrer
SAMUEL M. LEHRER, J.

SML/db:ns

RECEIVED: APRIL 13, 1989

APPENDIX D — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED JULY 26, 1989

POST & SCHELL, P.C.
BY: Michael D. Schaff, Esquire
IDENTIFICATION NO. 33151 ATTORNEY FOR Defendant
19TH FLOOR, 1800 JOHN F. KENNEDY BOULEVARD
PHILADELPHIA, PA. 19103
(215) 587-1000

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

DECEMBER TERM, 1988

No. 1408

RUSBEIRO MESSA

VS.

FRANKFORD QUAKER GROCERY

AND

NORTHBROOK INSURANCE COMPANY

ORDER

AND NOW, to wit, this 26th day of July, 1989, upon consideration of the Prelminary Objections of the defendants, to Plaintiff's Complaint, and any Answers thereto, it is hereby ORDERED and DECREED as follows:

Plaintiff's Complaint is dismissed for failure to state a viable cause of action and for improper service.

Appendix D

BY THE COURT:

s/ Samuel M. Lehrer
Samuel M. Lehrer, J.

APPENDIX E — ORDER OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY DATED JULY 26, 1989

SWARTZ, CAMPBELL & DETWEILER
BY:
Curtis P. Cheyney, III Esquire
Identification No. 03827
17th Floor, Land Title Bldg.
Philadelphia, PA 19110
(215) 564-5190

Attorney for Defendant,
Northbrook Insurance Co.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION - LAW
DECEMBER TERM, 1988
NO. 1408

RUSBEIRO MESSA

v.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE COMPANY

ORDER

AND NOW, this 26th day of July, 1989, upon consideration of the preliminary objections of defendant, Northbrook Insurance Company, and plaintiff's response thereto, it is hereby ORDERED and DECREED that plaintiff's complaint is stricken with leave to plaintiff to file a more specific pleading pursuant to Pennsylvania Rule of Civil Procedure 1017(b)(3).

s/ S. M. Lehrer

APPENDIX F — OPINION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FILED OCTOBER 11, 1989

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

DECEMBER TERM, 1988
NO. 1408

RUSBEIRO MESSA

vs.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE CO.

OPINION

Plaintiff Rusbeiro Messa filed a notice of appeal to the Commonwealth Court from an Order of this Court signed on July 7, 1989 and docketed on August 18, 1989. This Court issued two Orders with these dates. The first Order granted both Defendants' Preliminary Objections and dismissed Plaintiff's Complaint for failure to state a cause of action and for improper service. The second Order granted Defendant Northbrook Insurance Company's ("Northbrook") Preliminary Objections and ordered that the Complaint be stricken with leave for Plaintiff to file a more specific pleading. Plaintiff does not indicate which of these Orders he is appealing.

Plaintiff brought this action the basis of work-related injuries which he suffered while being employed by Defendant Frankford Quaker Grocery ("Grocery"). At the time of the injuries, Defendant Grocery had a policy of workers' compensation

insurance with Defendant Northbrook. Plaintiff received workmen's compensation benefits. On February 2, 1987, the Defendants filed a Petition to Terminate, Modify or Suspend Compensation with the Workmen's Compensation Bureau.

When this Court entered the Orders signed on July 7, 1989, it was under the misapprehension that Defendants' corresponding Preliminary Objections had not yet been disposed of. On April 12, 1989, this Court had, however, already signed an Order which decided those same objections. The subsequent Orders which are on appeal now may be viewed as a reconsideration. On July 7, 1989, this Court had, however, lost its jurisdiction for such a reconsideration due to the expiration of the 30 day period. *See* Rules of Appellate Procedure §§ 1701(b)(3); 903(a). Therefore, we find that the Order signed on April 12, 1989 should be controlling.

We note that appeal has been taken to the Commonwealth Court. The Commonwealth Court only has appellate jurisdiction in matters listed in 42 Pa. C.S.A. § 762. The instant matter is not covered by this provision. The appeal may, however, be transferred to the proper court according to Rules of Appellate Procedure § 751.

BY THE COURT:

s/ Samuel M. Lehrer
SAMUEL M. LEHRER, J.

SML/db:sw

APPENDIX G — ORDER OF THE COMMONWEALTH COURT OF PENNSYLVANIA DATED OCTOBER 16, 1989

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 1715 C.D. 1989

RUSBEIRO MESSA,

Appellant

v.

FRANKFORD QUAKER GROCERY and NORTHBROOK INSURANCE COMPANY,

Appellees

ORDER

PER CURIAM

NOW, October 16, 1989, upon consideration of the above-captioned matter, and it appearing that this is an appeal from an order in a civil action and not an appeal from a decision of the Workmen's Compensation Appeal Board, the above appeal is hereby transferred to the Superior Court of Pennsylvania.

The Chief Clerk shall certify to the Prothonotary of said court a photocopy of the docket entries of the above matter and transmit to him/her the record thereof.

In addition to mailing copies of this Order to counsel of record, the Chief Clerk is directed to mail a copy of same to Judge Samuel Lehrer of the Court of Common Pleas of Philadelphia County.

Appendix G

CERTIFIED FROM THE RECORD
AND ORDER EXIT
OCT 17 1989

s/ illegible
Deputy Prothonotary - Chief Clerk

APPENDIX H — JUDGMENT AND MEMORANDUM OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA FILED SEPTEMBER 28, 1990

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03068 PHILADELPHIA 1989

RUSBEIRO MESSA,

APPELLANT

V.

FRANKFORD QUAKER GROCERY AND NORTHBROOK INSURANCE COMPANY

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED.

BY THE COURT:

s/illegible
PROTHONOTARY

Appendix H

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03068 PHILADELPHIA 1989

RUSBEIRO MESSA,

APPELLANT

V.

FRANKFORD QUAKER GROCERY AND NORTHBROOK INSURANCE COMPANY

Appeal from the Order Entered August 2, 1989 in the Court of Common Pleas of Philadelphia County, Civil No. 1408 Dec. 1988.

BEFORE: WIEAND, BECK, POPOVICH, JJ.

MEMORANDUM:

This case presents two questions: (1) whether the trial judge erred when he sua sponte issued orders sustaining appellees' preliminary objections after already having denied them; and (2) whether an employee may maintain an action in tort against an employer and its insurance carrier for interference with his right to receive worker's compensation benefits and intentional infliction of emotional distress, or whether such an action is barred by the Workmen's Compensation Act, Pa.Stat.Ann. tit. 77, §§ 1-676 (Purdon Supp. 1990).

Appellant, Rusbeiro Messa ("Messa"), sued appellees Frankford Quaker Grocery ("Frankford"), his employer, and Frankford's insurance carrier, Northbrook Insurance Company

("Northbrook") (collectively "appellees") for deliberately interfering with his right to receive worker's compensation benefits and for intentional infliction of emotional distress. The trial court sustained appellees' preliminary objections in the nature of a demurrer and dismissed the complaint. We affirm.

Messa worked as a warehouseman for Frankford from 1977-1986, where he was responsible for lifting and storing boxes and operating a forklift. He first injured his groin in 1982. The injury was aggravated by continued heavy work, until Messa required hernia surgery in 1985. In 1986, Messa injured his knee on the job, and hasn't worked since. He was initially denied worker's compensation benefits for both of these injuries, but was eventually awarded benefits by a referee. He contends in this case that appellees cut off his benefits prematurely, and deliberately hindered Messa's case before the Workmen's Compensation Board by failing to report the knee injury to the proper authorities and by withholding evidence.

Frankford and Northbrook were initially represented by the same counsel. On January 19, 1989, they filed joint preliminary objections in the nature of a demurrer. Northbrook subsequently obtained its own counsel, who filed a preliminary objection in the nature of a motion to strike the complaint on February 16, 1989. On April 12, 1989, Judge Lehrer of the Philadelphia Court of Common Pleas issued an order denying the joint preliminary objections on the ground that Messa's complaint states a cause of action under *Kuney v. PMA Insurance Co.*, 379 Pa.Super. 598, 550 A.2d 1009 (1988), *reversed*, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990). Northbrook's supplemental preliminary objection was also denied. Frankford filed a motion for reconsideration, which was denied by Judge Lehrer on May 8, 1989. Northbrook and Frankford each filed an Answer and

Appendix H

New Matter to Messa's complaint. On June 8, 1989, Messa filed a Motion for Summary Judgment.

The judge then, sua sponte, issued two inconsistent orders in response to the preliminary objections, both dated July 26, 1989 and both docketed on August 2, 1989. One order, applicable to both appellees, sustains the first set of preliminary objections, and dismisses Messa's complaint for failure to state a cause of action. The other, applicable only to Northbrook, strikes the complaint but grants Messa leave to amend. On August 14, 1989, Judge Lehrer denied Messa's motion for summary judgment. Appellant appeals only from the order of July 26, 1989 dismissing the complaint.[1]

Judge Lehrer issued an opinion in response to Messa's notice of appeal, in which he attempted to explain his actions in this case. The opinion states:

---

1. We emphasize that Messa appeals only from the order that dismisses the complaint. That order, issued in response to preliminary objections filed jointly by Frankford and Northbrook, is final and appealable, as it effectively put Messa "out of court." *Cunningham v. Prudential Property and Casualty Insurance Co.*, 340 Pa.Super. 130, ____, 489 A.2d 875, 877 (1985). The second order, issued in response to Northbrook's preliminary objections, which struck the complaint but granted Messa leave to amend, is not a final order and is ordinarily not appealable. *Freeze v. Donegal Mutual Insurance Co.*, 504 Pa. 218, ____, n. 5, 470 A.2d 958, 960, n. 5 (1983). We nevertheless treat the order appealed from as final as to both Frankford and Northbrook. The first order applies to both appellees. Messa, who is proceeding in this matter pro se, did not unreasonably conclude that the order dismissing the complaint put him out of court. Due to the confusion resulting from judicial error in this case, it is our view that Messa should not be penalized for appealing rather than amending the complaint and proceeding against Northbrook below. Even if appellant had taken the course of amending the complaint, he would be out of court as to Frankford. Therefore, the appeal is proper.

Appendix H

> When this Court entered the Orders signed on [July 26] 1989, it was under the misapprehension that Defendants' corresponding preliminary objections had not yet been disposed of. On April 12, 1989, this Court had, however, already signed an Order which decided those same objections. The subsequent Orders which are on appeal now may be viewed as a reconsideration. On [July 26], 1989, this Court had, however, lost its jurisdiction for such a reconsideration due to the expiration of the 30 day period. *See* Rules of Appellate Procedure §§ 1701(b)(3); 903(a). Therefore, the Order signed on April 12, 1989 should be controlling.

Trial Court Op. at 1-2. We consider first whether the judge had jurisdiction to issue the order of July 26 dismissing the complaint.

The April 12 order denied both the joint preliminary objections and Northbrook's supplemental preliminary objection. Judge Lehrer concluded that he did not have jurisdiction to reconsider this order on July 26 because more than thirty days elapsed since he issued the April 12 Order.[2] 42 Pa.Cons.Stat.Ann. § 5505 (Purdon 1981) governs the modification of court orders and provides:

> Except as otherwise provided or prescribed by law,

---

2. We note preliminarily that the two rules cited by the trial judge, Pa.R.App.P. 1701(b)(3) and 903(a), involve the power of the trial court to modify its orders after an appeal has been taken. The action of the trial judge in the instant case occurred prior to the filing of a notice of appeal. Thus, the cited rules are inapplicable.

> a court upon notice to the parties may modify or rescind an order within thirty days after its entry, notwith standing the prior termination of any term of court, if no appeal from such order has been taken or allowed.

It has been consistently held that the thirty day limitation in section 5505 applies only to final orders. *Commonwealth v. McMillan*, 376 Pa.Super. 25, ____, 545 A.2d 301, 305 (1988), *aff'd*, 523 Pa. 426, 567 A.2d 1043 (1990); *Atlantic Richfield Co. v. J.J. White, Inc.*, 302 Pa.Super. 276, ____, 448 A.2d 634, 636 (1982). The April 12 order in the instant case, denying preliminary objections, is an interlocutory order. *MacNeal v. I.C.O.A., Inc.*, 382 Pa.Super. 430, ____, 555 A.2d 916, 918 (1989); *Foulke v. Lavelle*, 308 Pa.Super. 131, ____, 454 A.2d 56, 58 (1982). The passing of thirty days, therefore, did not divest the court below of its jurisdiction to modify the Order of April 12. In fact, the trial court has inherent power to correct its interlocutory orders. *Commonwealth v. Cole*, 437 Pa. 288, 292-93, 263 A.2d 339, ____ (1970) (trial court possesses inherent power to correct patent mistakes in its orders); *Atlantic Richfield Co.*, 302 Pa.Super. at ____, 448 A.2d at 636. Judge Lehrer was therefore free to reconsider the April 12 order.

Having concluded that the judge had jurisdiction to reconsider the April 12 Order, we proceed to consider whether he erred in doing so sua sponte. For the reasons that follow, we find no error.

A trial court may reconsider final orders under Section 5505 sua sponte. *Anderson v. Anderson*, 375 Pa.Super. 341, ____, 544 A.2d 501, 504 (1988). The *Anderson* panel described the court's power under section 5505 as "almost completely discretionary; this power may be exercised *sua sponte*, or may be invoked by

a request for reconsideration filed by the parties, and the court's decision to decline to exercise such power will not be reviewed on appeal." 375 Pa.Super. at ____, 544 A.2d at 504. We find it prudent that the trial judge be given similar discretion when reconsidering interlocutory orders, and hold that the trial judge may reconsider interlocutory orders sua sponte.

Since the order appealed from was properly issued, we may address the substantive question raised in this appeal. The issue is whether the Workmen's Compensation Act (hereafter, "the Act") permits a cause of action against an employer and its insurance carrier for interference with a worker's compensation claim, and emotional distress arising therefrom, or whether such an action is barred by the Act's exclusive remedy provisions.

The standard of review when considering an order granting preliminary objections in the nature of a demurrer was stated by the Pennsylvania Supreme Court in *County of Allegheny v. Commonwealth*, 507 Pa. 360, ____, 490 A.2d 402, 408 (1985) as follows:

> A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. For the purpose of testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well pleaded, material, relevant facts, and every inference fairly deducible from those facts. The pleader's conclusions of law are not considered to be admitted as true by demurrer.
>
> Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of

> his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief can be granted. If the facts as pleaded state a claim for which relief may be granted under any theory of law, then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

(Citations omitted).

Under this standard, Messa's complaint establishes the following. Messa worked for Frankford from 1977 to March 28, 1986 as a warehouseman. His duties included pulling and pushing six foot high loaded carts, lifting boxes weighing up to seventy-two pounds, and operating a fork-lift and tractor. Messa first injured his groin in 1982 while lifting a seventy pound box. Despite doctors' recommendations that he be given light work to do, Frankford ordered Messa to continue with heavy work. His injury was aggravated by continued heavy lifting. In 1984, Messa was denied Worker's compensation for this injury. In December of 1985, Messa further injured his groin, requiring a hernia operation. Messa did receive worker's compensation benefits for this injury, but Northbrook sent Messa a notice of final compensation only three days after the surgery. In March of 1986, Messa injured his right knee on the job. This injury required surgery, and Messa has not worked since.

Messa received compensation for the knee injury, but it was terminated upon petition of Frankford in May of 1987, despite the fact that Messa required further surgery on his knee. In January of 1988, Messa filed a claim petition directly to the Department

of Labor. His investigation disclosed that Frankford never reported the knee injury to the proper authorities. Frankford also failed to present factory records under subpoena. After a hearing, Messa's benefits were reinstated. Despite the referee's order, appellees have refused to pay for continued medical treatment. As a result of the aggravation caused by appellees' refusal to pay for medical treatment, Messa suffers from depression in addition to continued pain from the work-related injuries. Appellees refuse to pay for treatment for the depression and continued pain.

Messa contends that Frankford and Northbrook intentionally hindered his worker's compensation claim, and in so doing, caused him emotional distress. As such, he argues, they are not protected by exclusive remedy provisions in the Act. Judge Lehrer found in his order of April 12 that the allegations in Messa's complaint state a cause of action under *Kuney v. PMA Insurance Co.*, 379 Pa.Super. 598, 550 A.2d 1009 (1988), *reversed*, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990). The order of July 26, however, which reconsidered the April 12 order, ruled that the complaint failed to state a cause of action. That order does not indicate the legal basis on which this determination was made.

Appellees contend in their briefs that sections 481(a) and 501 of the Act preclude Messa from bringing a cause of action against them for interference with Messa's right to collect benefits and for intentional infliction of emotional distress. Section 481 relates to the liability of an employer, and provides:

> (a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin

> or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death[.]

Section 501 provides that insurance carriers "assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder[.]"

We consider first whether these provisions preclude Messa from maintaining a cause of action against Frankford, the employer, for intentionally hindering his worker's compensation claim and for emotional distress. We find that under our current precedents, there is no action against an employer for claims arising from the employer's intentional mishandling of a worker's compensation claim.

In *Rosipal v. Montgomery Ward*, 360 Pa.Super. 570, 521 A.2d 49 (1987), *appeal granted*, 516 Pa. 635, 533 A.2d 93 (1987), *appeal dismissed*, 517 Pa. 460, 538 A.2d 495 (1988), Joann Rosipal commenced a civil action against her employer, Montgomery Ward, for claims arising from the faulty administration of her worker's compensation claim. Her complaint alleged causes of action for economic duress, intentional infliction of emotional distress, procuring a "false and fraudulent affidavit of [recovery]," and breach of the compensation agreement. 360 Pa.Super. at ____, 521 A.2d at 50. Montgomery Ward filed a preliminary objection in the nature of a demurrer, averring that Rosipal's claims were barred by the exclusive remedy provisions of the Act. The trial judge overruled Montgomery Ward's preliminary objections, finding that Rosipal's claim "did not arise from an employment related accident such as would be covered by the Workmen's Compensation Act." *Id.* The Superior Court granted Montgomery

Ward's petition for review, and rejected the lower court's analysis, reasoning:

> . . . the underlying factor in the present action is the alleged injury suffered by the employee while she was acting as a security guard. In the absence of the injury, there would have been no workmen's compensation proceedings out of which the instant civil action arose.

Id. The *Rosipal* panel held that the exclusivity provisions of the Act preclude a cause of action against an employer for claims related to the mishandling of a worker's compensation claim. The trial judge in the instant case was therefore correct in concluding that Messa's complaint stated no cause of action against Frankford.

Rosipal involved claims only against an employer. We now proceed to determine whether Messa's claim against the insurance carrier is also barred by the exclusive remedy provisions of the Act.

Based on the recently decided Pennsylvania Supreme Court case of *Kuney v. PMA Insurance Company*, No. 128 E.D. Appeal Docket 1989 (Pa. filed August 22, 1990), we conclude that Messa can not maintain an independent action against appellee Northbrook.

Order affirmed.

APPENDIX I — ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA DATED OCTOBER 30, 1990

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3068 Philadelphia 1989

RUSBEIRO MESSA,

Appellant

V.

FRANKFORD QUAKER GROCERY AND NORTHBROOK INSURANCE COMPANY

ORDER

The court hereby denies the application filed October 12, 1990, requesting reargument or reconsideration of the decision dated September 28, 1990.

Per Curiam
PER CURIAM

DATE: October 30, 1990

APPENDIX J — NOTICE OF THE SUPREME COURT OF PENNSYLVANIA AS TO ORDER ENTERED JUNE 24, 1991

SUPREME COURT OF PENNSYLVANIA
Middle District

June 28, 1991

Rusbeiro Messa
4161 Salem Street
Philadelphia, PA 19124

Re: Rusberiro Messa, Petitioner
v. Frankford Quaker Grocery and
Northbrook Ins. Co.
No. 1043 E.D. Allocatur Docket 1990

Dear Mr. Messa:

This is to advise that the following Order has been entered for the Petition for Allowance of Appeal filed in the above-captioned matter:

"June 24, 1991, Petition denied Per Curiam"

Sincerely yours,

s/ Shirley Bailey
Shirley Bailey,
Chief Clerk

spb
xc: Hon. Samuel H. Lehrer
Joseph A. Venuti, Jr., Esq.
Walter J. Timby, III, Esq.

Appendix J

Prothonotary's Office - Phila. County
(No. 1408 December Term, 1988)
Prothonotary's Office - Superior Court
(No. 3068PHL89)

APPENDIX K — NOTICE OF THE SUPREME COURT OF PENNSYLVANIA AS TO ORDER ENTERED SEPTEMBER 3, 1991

SUPREME COURT OF PENNSYLVANIA
Eastern District

September 10, 1991

Rusbeiro Messa
4161 Salem Street
Philadelphia, PA 19124

RUSBEIRO MESSA, PETTTIONER V. FRANKFORD QUAKER GROCERY AND NORTHBROOK INSURANCE COMPANY
NO. 1043 E.D. ALLOCATUR DOCKET 1990

Dear Mr. Messa:

This is to advise you that the following Order has been endorsed on your Application for Reconsideration filed, in the above captioned matter.

"September 3, 1991

Petition Denied.

Per Curiam.

Very truly yours,

s/ Patricia Johnson
Patricia Johnson,
Assistant Chief Clerk

Appendix K

PJ/rh
cc: Joseph A. Venuti, Jr., Esquire
Walter J. Timby, III, Esquire